Supreme Court, U. S.
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In The

# Supreme Court of the United States

October Term, 1979

No. 79-1954

ERNEST THOMPSON,

*Petitioner,*

*vs.*

J. S. YOUNG CO. and OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

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In The

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No.

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## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FOURTH CIRCUIT

### OPINIONS BELOW

The order of the United States District Court for the District of Maryland in case numbers HM78-857 and 858 was unreported but is reproduced as Appendix A, a letter of explanation in the same cases by the judge to the plaintiff (as these cases were filed in proper person) is included as Appendix A-2, and after plaintiff filed a motion for reconsideration, the district court filed a short memorandum and order included as Appendix A-3.

A similar case (number HM78-844) by plaintiff in the same district court against a different defendant was summarily dismissed by order which is reproduced as Appendix B.

The order of the Appellate Court for the Fourth Circuit in plaintiff's first two cases (numbered 79-1670 and 1671 in that court) that these cases be affirmed is reproduced as Appendix C and again in plaintiff's second case (number 79-1604 in the Fourth Circuit) his petition for a rehearing was denied, and this last order is reproduced as Appendix C-1.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254.

## QUESTIONS PRESENTED

Were the petitioner's civil and constitutional rights violated by the district court's refusal to grant him a hearing on any of his grievances?

## CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> "No state shall. . .deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

## STATEMENT OF THE CASE

Three separate petitions were originally filed by plaintiff in the United States District Court for Maryland; two against the J. S. Young Co., a local company, based in Baltimore, Maryland, and plaintiff's former employer, and the third against

the Oil, Chemical and Atomic Workers International Union, AFL-CIO, the plaintiff's former union. The plaintiff retired from both in August of 1971, on or about his 65th birthday.

The district court dismissed plaintiff's first two complaints against J. S. Young Co. on May 16, 1978 without a hearing and without service on the defendant. The plaintiff filed a motion for reconsideration as to both petitions, which motion was granted, and the district court then quickly filed a short memorandum and order dated June 13, 1978 affirming its prior order of dismissal.

Plaintiff's third complaint against the AFL-CIO was served on the defendant union, which union filed a motion to dismiss in September of 1978, which motion was granted by the district court judge without a hearing on September 7, 1979.

The substance of the first complaints against the J. S. Young Co. (where plaintiff had worked for 25 years) was a request by the plaintiff for a pension increase from his former employer, and allegations that said employer failed to provide a safe place in which to work in that the plant was being sabotaged by outsiders coming in "tampering with the controls" and for threatening serious bodily harm to the plaintiff.

The substance of the third complaint against the AFL-CIO was various acts of mistreatment and "denial of representation in the operating engineers local," *i.e.*, that the local he was in (Oil, Chemical and Atomic Workers International) was a laboring union, and the plaintiff was a licensed engineer and belonged in Operating Engineers local which was a professional union, and that the Atomic Workers local consistently refused to "release" plaintiff to join the more esoteric engineers local. The plaintiff further alleged and alleges that the result of all of this was that the Atomic Workers local discriminated against him by treating him and paying him as a common laborer, thereby keeping him down; that the defendant union exploited plaintiff

by underpaying him [between One Dollar ($1.00) and Five Dollars ($5.00) less an hour than an engineer] but when they needed his engineering skills, to run Young's power plant, they used him for such work.

Note: This certiorari is a perfunctory exercise by counsel at the insistence of the plaintiff who is determined to have this Honorable Court rule on his grievances.

## REASON FOR GRANTING THE WRIT

Petitioner alleges and argues that his constitutional rights were abridged because he was shortchanged at the district court level in that he was never allowed a hearing on any of his complaints. All of his complaints and allegations were dismissed out of hand by the district court in all three of his complaints and said dismissals were affirmed on appeal, denying petitioner his day in court, the right to confront the defendant, all witnesses and otherwise to advocate his grievances.

Petitioner alleges that all of his grievances amount to a gigantic denial of his civil rights under 42 U.S.C. §1983 and under the Fourteenth Amendment to the United States Constitution and that the district court should have heard his grievances. Such denial of his civil rights was by both defendants, namely the J. S. Young Co., which was also guilty of placing the petitioner through extreme mental anguish as well as exposing him to possible physical harm through its negligence in security matters, such as failing to put up requisite "No Trespassing" signs as well as failing to keep out saboteurs in its Baltimore plant. Said negligence allowed said saboteurs to tamper with the controls of the very sensitive boilers, exposing the entire plant, especially the petitioner, to a threat of severe physical harm. Petitioner alleges that defendant J. S. Young Co. refused to listen to his claims of said sabotage, and furthermore refused to employ him in a position for which he was eminently qualified, namely that of stationary engineer, and kept him in a

laborer's position on account of his race. He further alleges that although he was officially titled and paid as a laborer, he was in fact performing the duties of an engineer, and was therefore owed much more money than he was being paid. He therefore applied for an award of the back pay, as well as the differential between the wage he was earning as a laborer and the one he was entitled to as an engineer. *Johnson v. Railway Express Agency*, 421 U.S. 454 (1975), *see also, Erie Human Relations Commission v. Tullio*, 493 F.2d 371. The employer is required to exercise reasonable care in providing its employees with safe machinery and a safe place to work, and this was not done. *Central R. Co. v. Keegan*, 160 U.S. 259. Petitioner alleges that this was not done, and his warnings about same were not heeded because of petitioner's race.

Petitioner alleges that his civil rights were also abridged under 42 U.S.C. 1981 *et seq.* by the other defendant, namely the Oil, Chemical and Atomic Workers International Union, AFL-CIO, in that the defendant union failed to release the petitioner from its local to join the Operating Engineers local, thereby forcing him to be classified as a laborer. Petitioner alleges that this was discriminatory, arbitrary and capricious, and that he was entitled to have his case heard by the district court. Plaintiff was greatly embarrassed by said refusal to release, and is entitled to sue the union under Section 301 of the Taft-Hartley Act as well as under Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e *et seq.*). Petitioner also suffered pecuniary loss by such conduct of the union.

Since his retirement in 1971, the petitioner alleges that the abuses have continued against him by the J.S. Young Co. in that said defendant has continually refused to pay the petitioner his rightful pension benefits, this claim being based on the out-of-title work that he was assigned to do by said defendant. The district court, by its perfunctory dismissal, refused the petitioner a chance to have this case heard.

## CONCLUSION

For the foregoing reasons, we submit that the petition for writ of certiorari should be granted.

Respectfully submitted,

s/ G. Denmead LeViness
*Attorney for Petitioner*

## APPENDIX A — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. HM78-858

ERNEST THOMPSON

v.

THE J.S. YOUNG COMPANY

Because the complaint filed herein fails to state a cognizable claim, it is this 16th day of May, 1978, by the United States District Court for the District of Maryland,

*ORDERED:*

that the complaint be, and the same hereby is, *Dismissed.*

s/ Herbert F. Murray
United States District Judge

FILED: MAY 16, 1978

## APPENDIX A-2 — LETTER OF EXPLANATION

UNITED STATES DISTRICT COURT

District of Maryland

Baltimore 21201

United States District Judge

May 16, 1978

Mr. Ernest Thompson
1514 Madison Avenue
Baltimore, Md. 21217

Re: *Civil Nos. HM78-857 and HM78-858*

Dear Mr. Thompson:

The court has reviewed the complaints filed in HM78-857 and HM78-858 against the J. S. Young Company. The court already has considered similar claims against the J. S. Young Company set forth in HM77-1523 which were dismissed because they lacked merit. After review, the court has concluded that the complaints filed HM78-857 and HM78-858 also do not state a cause of action cognizable in this court. Because the claims lack merit, the court will not require that defendant be served and the court will dismiss the complaints.

Very truly yours,

(signed) Herbert F. Murray
United States District Judge

## APPENDIX A-3 — MEMORANDUM AND ORDER

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. HM78-857

ERNEST THOMPSON

v.

THE J. S. YOUNG COMPANY

Civil No. HM78-858

ERNEST THOMPSON

v.

THE J. S. YOUNG COMPANY

Plaintiff, Ernest Thompson, proceeding pro se, filed two civil actions against the J. S. Young Company, his former employer, for failure to provide plaintiff with an adequate pension and for forcing plaintiff to work in dangerous conditions. After consideration of the complaints, on May 16, 1978 the court ordered the complaints dismissed without service on defendant. The court determined that plaintiff had not stated a cause of action against defendant which would be cognizable under the statutes cited by plaintiff, and the court could not conceive of any other statute that would provide a basis of relief. Moreover, the court noted that the two suits filed by plaintiff stated claims which appeared very similar to claims stated in an earlier action filed by plaintiff which the court had dismissed after a hearing on defendant's motion to dismiss.

Plaintiff has filed a motion for reconsideration in both cases because he believes that the court did not have the authority to

dismiss the complaints without a hearing. Local Rule 6 makes it clear that the court is authorized to dismiss cases without a hearing. Courts also have held that the court may dismiss a complaint for failure to state a claim sua sponte. *See Literature, Inc. v. Quinn,* 482 F.2d 372 (1st Cir. 1973). To ensure, however, that plaintiff's claims failed completely to state a cause of action, the court has reviewed those claims, together with the allegations set forth in motion for reconsideration, and the court has concluded that dismissal of plaintiff's claims was proper. By reconsidering the claims, the court has provided plaintiff with an opportunity to clarify the claims in light of knowledge of the likelihood of dismissal. *See id.* The court notes also that plaintiff's claims in HM78-857 and HM78-858 are very similar to claims set forth in an earlier complaint filed in this court, HM77-1523. In the earlier case, the court required defendant to file a response, and the court held a hearing on the defense motion to dismiss at which time the court provided plaintiff with an opportunity to state his claim. The court determined that in the similar claims filed in HM77-1523 plaintiff had failed to state a claim upon which relief may be granted.

According', it is this 13th day of June, 1978, by the United States District Court for the District of Maryland,

*ORDERED:*

(1) that plaintiff's motion for reconsideration be, and the same hereby is, *Granted;*

(2) that the court's order of dismissal dated May 16, 1978 be, and the same hereby is, *Affirmed.*

s/ Herbert F. Murray
United States District Judge

FILED: JUNE 13, 1978

## APPENDIX B — ORDER OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. HM78-844

ERNEST THOMPSON

v.

INTERNATIONAL UNION: AFL-CIO

This is plaintiff's second action against the AFL-CIO International Union wherein he alleges various acts of mistreatment and denial of representation when he was working for the J. S. Young Company. This action is couched in very much the same language as his earlier action, *Thompson v. International Union: AFL-CIO*, HM77-1667, which the court dismissed for lack of jurisdictional basis.

In this second suit plaintiff apparently relies on the Fourteenth Amendment as a jurisdictional provision and a basis for his substantive cause of action. He does not, however, state any facts which show the existence of any state action. The court once again fails to see any basis for asserting jurisdiction nor can it find a cognizable cause of action.

Accordingly, it is this 7th day of September, 1979, by the United States District Court for the District of Maryland,

*ORDERED:*

(1) that defendant's motion to dismiss be, and the same hereby is, *Granted;* and

(2) that the Clerk shall mail copies of this Order to the parties.

s/ Herbert F. Murray
United States District Judge

FILED: SEPTEMBER 7, 1979

## APPENDIX C — JUDGMENT OF UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1670

Ernest Thompson,

Appellant,

v.

The J. S. Young Company,

Appellee

Appeal from the United States District Court for the District of Maryland.

This cause came on to be heard on the record from the United States District Court for the District of Maryland.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

s/ William K. Slate, II
CLERK

FILED: DEC 26 1979

## APPENDIX C-1 — ORDER DENYING PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1604

Ernest Thompson,

Appellant,

versus

International Union; AFL-CIO,

Appellees.

Upon consideration of the appellant's petition for rehearing, by counsel,

IT IS ORDERED that the petition for rehearing is DENIED.

Entered at the direction of Judge Hall with the concurrence of Judge Phillips and Judge Murnaghan.

For the Court,

s/ William K. Slate, II
CLERK

FILED: JAN 25 1980

Supreme Court, U.S.
FILED
JUL 3 1980
MICHAEL RODAK, JR., CLERK

In The

# Supreme Court of the United States

October Term, 1979

No. 79-1954

ERNEST THOMPSON,

*Petitioner,*

*vs.*

J. S. YOUNG CO. and OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO,

*Respondents.*

## SUPPLEMENTAL APPENDIX

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**UNPUBLISHED DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT FILED DECEMBER 26, 1979**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Nos. 79-1670 and 1671

Ernest Thompson,

Appellant,

v.

The J. S. Young Company,

Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Herbert F. Murray, District Judge.

Submitted: November 16, 1979
Decided: December 26, 1979

Before RUSSELL, WIDENER and SPROUSE, Circuit Judges.

(Ernest Thompson, Appellant Pro Se. Michael J. Herwig, for the Appellee.)

PER CURIAM:

Ernest Thompson appeals district court orders disallowing his untimely appeals in the instant cases. Because both involve the same defendant, we consolidate them for decision.

We need not review the district court's denial of leave to appeal. Because the court did not enter a separate final

judgment, the time for appeal never began to run. *Caperton v. Beatrice Pocahontas Coal Co.*, 585 F. 2d 683 (4th Cir. 1978).

Insofar as Thompson seeks to hold appellee liable under the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §401, *et seq.*, we note that the statute does not create a cause of action against an employer. *Duncan v. Peninsula Shipbuilders Ass'n.*, 394 F.2d 237 (4th Cir. 1968). Similarly the borrowed statute of limitations has run on his claim under 42 U.S.C. §1985. *See* Md. Code Ann. C.J. §5-101. Because the record and materials filed indicate that oral argument would not aid our decision, we dispense with it, and affirm the judgment of the district court.

*AFFIRMED*

# JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT FILED DECEMBER 26, 1979

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1671

Ernest Thompson,

Appellant,

v.

The J. S. Young Company,

Appellee.

Appeal from the United States District Court for the District of Maryland.

This cause came on to be heard on the record from the United States District Court for the District of Maryland.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

s/ William K. Slate II
CLERK

## ORDER DENYING REHEARING FILED FEBRUARY 19, 1980

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 79-1670

Ernest Thompson,

Appellant,

versus

The J. S. Young Company,

Appellee.

NO. 79-1671

Ernest Thompson,

Appellant,

versus

The J. S. Young Company,

Appellee.

Appeals from the United States District Court for the District of Maryland at Baltimore. Herbert F. Murray, District Judge.

Upon consideration of the appellant's petition for rehearing,

IT IS ORDERED that the petition for rehearing is denied.

*Order Filed February 19, 1980*

Entered at the direction of Judge Russell with the concurrence of Judge Widener and Judge Sprouse.

For the Court,

s/ William K. Slate, II
CLERK

**UNPUBLISHED DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT FILED DECEMBER 18, 1979**

No. 79-1604

Ernest Thompson,

Appellant,

v.

International Union: AFL-CIO,

Appellees,

Appeal from the United States District Court for the District of Maryland, at Baltimore. Herbert F. Murray, District Judge.

Submitted: October 15, 1979
Decided: December 18, 1979

Before HALL, PHILLIPS and MURNAGHAN, Circuit Judges.

(Ernest Thompson, Appellant Pro Se. Bernard W. Rubenstein, for the Appellees.)

PER CURIAM:

A review of the record and of the district court's opinion discloses that this appeal from the order of the district court is without merit. Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument and affirm the judgment below on the reasoning of the district court. *Thompson v. International Union: AFL-CIO,* Civil No. HM78-844 (D.Md., September 7, 1979).

## JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT FILED DECEMBER 18, 1979

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 79-1604

Ernest Thompson,

Appellant,

vs.

International Union: AFL-CIO,

Appellees.

Appeal from the United States District Court for the District of Maryland.

This cause came on to be heard on the record from the United States District Court for the District of Maryland.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, affirmed.

s/ William K. Slate II
CLERK